

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

v

DRIVE PLANNING, LLC, and
RUSSELL TODD BURKHALTER,

Defendants,

and

JACQUELINE BURKHALTER,
THE BURKHALTER RANCH
CORPORATION, DRIVE
PROPERTIES, LLC, DRIVE
GULFPORT PROPERTIES LLC,
and TBR SUPPLY HOUSE, INC.,

Relief Defendants.

Case No. 1:24-cv-03583-VMC

**RECEIVER'S MOTION FOR AUTHORIZATION TO EMPLOY
DAMIAN VALORI CULMO AS LEAD COUNSEL, THE LAW OFFICES
OF HENRY F. SEWELL, JR., LLC AS LOCAL COUNSEL, AND HAYS
FINANCIAL CONSULTING, LLC AS FORENSIC ACCOUNTANT**

Kenneth D. Murena, as Court-Appointed Receiver (the “Receiver”) in the above-styled action, through undersigned counsel, hereby files his Motion for Authorization to Employ Damian Valori Culmo as Lead Counsel (the “Lead Counsel Firm”), the Law Offices of Henry F. Sewell, Jr., LLC as local counsel (the “Local

Counsel Firm”), and Hays Financial Consulting, LLC as forensic accountant (the “Forensic Accountant Firm”) (collectively, the Receiver’s Professionals”) *nunc pro tunc* to August 13, 2024, and states as follows:

1. This action commenced on August 13, 2024, with the filing of the Securities and Exchange Commission’s (“SEC”) Complaint against Defendants Drive Planning, LLC and Russell Todd Burkhalter and Relief Defendants Jacqueline Burkhalter, The Burkhalter Ranch Corporation, Drive Properties, LLC, Drive Gulfport Properties LLC, and TBR Supply House, Inc.

2. On August 13, 2024, the Court entered an Order Appointing Receiver (the “Appointment Order”), appointing Kenneth D. Murena, Esq. as Receiver of Drive Planning, LLC (“Driving Planning”). Pursuant to the Appointment Order, the Receiver is authorized to, among other things, “engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, . . . financial or business advisers, forensic experts, . . . or auctioneers.” *See* Appointment Order at ¶ 5. Prior to engaging any such professionals, the Receiver must first obtain an Order of this Court authorizing such engagement. *See* Appointment Order at ¶58. Any professionals that the Receiver engages with this Court’s approval are “entitled to reasonable compensation and expense reimbursement from the Receivership Estate as described in the ‘Billing Instructions for Receivers in Civil Actions Commenced

by the U.S. Securities and Exchange Commission' agreed to by the Receiver." *Id.* at ¶ 58.

3. Accordingly, pursuant to the Appointment Order, the Receiver seeks the Court's approval to engage the Lead Counsel Firm, Local Counsel Firm, and Forensic Accountant Firm to provide the Receiver with assistance in fulfilling his duties under the Appointment Order.

4. The Lead Counsel Firm has extensive experience in the area of receivership law. Russell Landy, a Partner at Damian Valori Culmo, will assume primary responsibility for this undertaking and serve as the Receiver's lead counsel. Mr. Landy currently serves, and has historically served, as lead counsel for court-appointed receivers in multiple federal and state equity receiverships arising from government enforcement actions, including prior cases commenced by the SEC and CFTC. And, Mr. Landy routinely serves as lead counsel in commercial fraud litigation, fraudulent transfer recovery actions, complex business litigation, and other litigation matters.

5. The Local Counsel Firm also has extensive experience in the areas of receivership law. Henry Sewell will assume primary responsibility as local counsel for the Receiver. Mr. Sewell regularly represents court appointed fiduciaries in SEC and CFTC enforcement actions. Mr. Sewell also has extensive experience handling

bankruptcy matters and commercial litigation matters, including trials, arbitrations and appeals in a wide variety of complex matters.

6. The Forensic Accountant Firm, led by S. Gregory Hays with financial management and operations experience, is highly proficient in handling complex insolvency and forensic accounting matters. Mr. Hays expertise extends to conducting in-depth forensic accounting investigations and offering comprehensive litigation support. The Forensic Accountant Firm is also regularly engaged in uncovering and investigating fraudulent activities and focuses on receivership cases.

7. Therefore, the Receiver's Professionals are well-equipped to represent the Receiver in general receivership matters, asset recovery litigation, and other litigation matters.

8. In consideration for the Receiver's Professionals aiding the Receiver, the Receiver proposes to pay fees based on the time expended by lawyers, paralegals, and other professionals and paraprofessionals of the Receiver's Professionals (based on fee applications to be filed by the Lead Counsel Firm, payment of which is subject to this Court's approval). Mr. Landy's normal hourly rate is \$650.00, Mr. Sewell's normal hourly rate is \$450 and Mr. Hays' normal hourly rate is \$450, but their hourly rates shall be reduced to \$395.00 for purposes of this case.

9. The Receiver's Professionals will be assisted by other attorneys, paralegals and other professionals and paraprofessionals whose hourly rates shall

not exceed \$395.00. The Receiver's Professionals have advised the Receiver that, whenever possible and appropriate, they shall utilize junior attorneys and paraprofessionals to minimize the expenses of the Receivership Estate.

10. The Receiver will ensure that there is no duplication of efforts or expenses between or among the attorneys and other professionals and paraprofessionals he engages with the approval of this Court.

11. The Receiver's Professionals have informed the Receiver that they do not have any conflict with serving as counsel for the Receiver in this case.

CERTIFICATION OF CONFERENCE

The undersigned counsel certifies that prior to filing this motion the Receiver conferred with counsel for the SEC, and with counsel for Defendants and Relief Defendants, regarding the relief requested herein and such counsel informed undersigned counsel that they have no opposition to the requested relief.

WHEREFORE, the Receiver respectfully requests that this Court enter the proposed Order attached as **Exhibit A**, authorizing the retention of (i) Damian Valori Culmo as lead counsel for the Receiver, (ii) the Law Offices of Henry F. Sewell, Jr., LLC as local counsel for the Receiver, and (iii) Hays Financial Consulting LLC as forensic

accountant for the Receiver, and (iv) for such other and further relief as the Court deems just and proper.

Dated: August 16, 2024.

LAW OFFICES OF HENRY F. SEWELL JR., LLC

/s/ Henry F. Sewell, Jr.

Henry F. Sewell, Jr.
Georgia Bar No. 636265
Buckhead Centre
2964 Peachtree Road NW, Suite 555
Atlanta, GA 30305
(404) 926-0053
hsewell@sewellfirm.com

Local Counsel for the Receiver

CERTIFICATE OF SERVICE, FONT AND MARGINS

I hereby certify that on August 16, 2024, I electronically filed the foregoing using the CM/ECF System that will automatically send e-mail notification of such filing to all registered attorneys of record.

I further certify that I prepared this document in 14 point Times New Roman font and complied with the margin and type requirements of this Court.

Dated: August 16, 2024.

LAW OFFICES OF HENRY F. SEWELL JR., LLC

/s/ Henry F. Sewell, Jr.

Henry F. Sewell, Jr.

Georgia Bar No. 636265

Buckhead Centre

2964 Peachtree Road NW, Suite 555

Atlanta, GA 30305

(404) 926-0053; hsewell@sewellfirm.com

Local Counsel to the Receiver

EXHIBIT A

PROPOSED ORDER

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

v

DRIVE PLANNING, LLC, and
RUSSELL TODD BURKHALTER,

Defendants,

and

JACQUELINE BURKHALTER,
THE BURKHALTER RANCH
CORPORATION, DRIVE
PROPERTIES, LLC, DRIVE
GULFPORT PROPERTIES LLC,
and TBR SUPPLY HOUSE, INC.,

Relief Defendants.

Case No. 1:24-cv-03583-VMC

**ORDER GRANTING RECEIVER'S MOTION FOR AUTHORIZATION
TO EMPLOY DAMIAN VALORI CULMO AS LEAD COUNSEL, THE
LAW OFFICES OF HENRY F. SEWELL, JR., LLC AS LOCAL COUNSEL
AND HAYS FINANCIAL CONSULTING LLC AS FORENSIC
ACCOUNTANT**

THIS CAUSE came before the Court on the Receiver's (the "Receiver") Motion for Authorization to Employ Damian Valori Culmo as Lead Counsel (the "Lead Counsel Firm"), the Law Offices of Henry F. Sewell, Jr., LLC as local counsel

(the “Local Counsel Firm”), and Hays Financial Consulting LLC as forensic accountant (the “Forensic Accountant Firm”) (collectively, the Receiver’s Professionals”), the Court having considered the Motion, and finding that cause exists to grant the Motion, it is hereby ORDERED as follows:

1. The Motion is **GRANTED**.
2. The Receiver is authorized to engage Damian Valori Culmo, the Law Offices of Henry F. Sewell, Jr, LLC and Hays Financial Consulting LLC to assist the Receiver in fulfilling his duties under this Court’s Orders effective as of August 13, 2024.

SO ORDERED, this ____ day of _____, 2024.

UNITED STATES DISTRICT COURT JUDGE